decrease from the number at a corresponding time last session. The following table indicates the enrollment by states and countries:

Alabama	1	Massachusetts	1
Arkansas	4	Michigan	1
California	1	Missouri	3
Canada	1	New Jersey	2
Connecticut	1	New York	4
Delaware	1	North Carolina	3
District of Columbia	6	Pennsylvania	2
Florida	4	South Carolina	8
Georgia	8	Tennessee	16
Illinois	1	Texas	6
Indiana	1	Virginia	120
Kentucky	12	West Virginia	8
Louisiana	3	Wyoming	1
Maryland	2		
		Total	221

Professor Eager has been promoted from an associate professorship to a full professorship, bringing the total number of full professors in the Law School up to five. The course in Evidence has been extended to include sixty instead of forty lectures, and the Course in Practice at Law to include thirty instead of twenty lectures as heretofore. Professor Eager will teach the course in Practice at Law. The courses in Taxation and International Law will henceforth be required for graduation. The course in Suretyship and Guaranty has been discontinued.

It is regretted that Professor Paul has not yet returned to the University, on account of ill health; but it is hoped that he will be able to return within a few days.

THE CHARLES MINOR BLACKFORD PRIZE.—This prize was established through the liberality of Mrs. Susan Colston Blackford, of Lynchburg, Va., in memory of her husband, the late Charles Minor Blackford, a distinguished alumnus of the Law School. The prize consists of fifty dollars in cash, and is awarded each year to a student in the Department of Law for the best essay on some legal or sociological subject. The award is made by a committee of three competent persons, not locally connected with the University, to be selected annually by the Law Faculty.

For the session of 1915-16 this prize was awarded to Mr. Eugene S. Williams, whose essay was entitled "Leading Questions on the Examination of a Witness."

EFFECT OF WITHDRAWING EVIDENCE ERRONEOUSLY ADMITTED.—When evidence which the law declares to be inadmissible has been improperly allowed to go before the jury, can the error thus com-

mitted be cured by instructing the jury not to consider such evidence? This is a question upon which the authorities are in great conflict. Some have gone to one extreme and some to the other, and various illogical criteria have been resorted to. Some opinions arbitrarily lay down the rule that where the jury has been instructed not to consider such evidence it must be presumed that they obeyed the court's instruction, and that the error is cured.[1] Others say that when evidence has been admitted it has already had its effect on the minds of the jury, and no subsequent instruction to disregard it can remove that effect and cure the error.[2] That neither of these extreme statements is by any means universally correct would seem clear. To hold that an instruction to the jury to disregard evidence erroneously admitted always cures the error and prevents any ill effects on the jury, no matter how prejudicial the character of that evidence, would be contrary to human experience.[3] And to hold that every error committed by violating some technical rule of evidence is irremediable would be equally unsound and extremely inexpedient.[4] It is clear that there must be some intermediate view which accords more nearly with reason, justice and expediency.

In an effort to arrive at the true doctrine the courts have resorted to various lines of reasoning and have set up many different criteria. Some look at the manner in which the evidence got before the jury: whether by failure of counsel to make proper objection,[5] or by fraud or unfair conduct of counsel,[6] or by surprise,[7] or by the court admitting it with the expectation that it would later be shown to be relevant.[8] Others say that if the evidence is not of

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[1] See Pennsylvania Co. *v.* Roy, 102 U. S. 451; Holmes *v.* Moffat, 120 N. Y. 159, 24 N. E. 275.

[2] See Sterling *v.* Sterling, 41 Vt. 80; Connecticut & P. R. Co. *v.* Baxter, 32 Vt. 805; Penfield *v.* Carpenter, 13 Johns. (N. Y.) 350; 2 WHARTON, CRIM. EV., § 915.

[3] See Drury *v.* Territory, 9 Okla. 398, 60 Pac. 101; 1 CHAMBERLAIN, MODERN LAW OF EV., § 376.

[4] "The reason that the testimony so given in presence of the jury, *might have* an influence, though they are directed to disregard it, would apply with equal force in all cases where any thing irrelevant may have crept in during the course of the trial, and would entitle parties to a succession of new trials, until no sentence should have been uttered which by any possibility might have an undue influence, though the jurors were unconscious of any influence." Hamblett *v.* Hamblett, 6 N. H. 333. See also Drury *v.* Territory, *supra*.

[5] See Holmes *v.* Moffat, *supra*.

[6] See Wojtylak *v.* Kansas & T. Coal Co., 188 Mo. 260, 87 S. W. 506.

[7] In Connecticut & P. R. Co. *v.* Baxter, *supra*, it was said: "So when evidence gets into a case through inadvertence, or where, as sometimes happens, when all the evidence is in on both sides, the case assumes a form that is unexpected by both parties, the court must regulate the matter by their charge."

[8] See State *v.* Hopkins, 50 Vt. 316, where the court said: "It often happens in the course of a trial that evidence which standing alone would not be admissible, is admitted upon the claim made that other evidence will be introduced bearing such relation to the evidence offered as to make it admissible; in other words, that the evidence offered is one link

a very material character the error is cured, but if it is of a very material character the error is not cured.[9]

The circumstances surrounding the cases vary so widely that it would seem clear that no arbitrary test can properly be relied upon; but there are many commonly occurring circumstances which should be given much weight. The nature of the case should be considered, and the court should more readily grant a new trial in felony cases and those civil cases in which juries frequently display prejudice or passion than in the trial of petty offenses and in the ordinary civil cases. The character of the evidence itself is naturally of prime importance. If it was of such a nature as to excite popular prejudice and inflame the minds of the jury against one party,[10] or to arouse great sympathy for the other,[11] or to so strongly influence the minds of the jury that it would be contrary to reason and human experience to say that they could so dismiss it from their minds that they would not be, at least unconsciously, influenced by it,[12] this would tend very strongly to show that the party was really prejudiced and that the error was not cured. But if, on the other hand, the evidence erroneously admitted was of little weight,[13] or the only objection to its introduction was a technical one,[14] it would seem that the party suffered no real injustice. The prominence given to the evidence and the manner in which the jury was instructed to disregard it is of great importance. It has been held that if it was not withdrawn until long after it was admitted, or was dwelt upon in argument by counsel, the error was not cured by withdrawing it at the last moment.[15] The verdict and the evidence upon which it is based should be carefully regarded. If there is good reason to suppose that the evidence erroneously admitted must have affected the decision of the jury notwithstanding the judge's instruction, a new trial should be granted;[16] and this

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in a chain of evidence, and that the other links will be supplied. And in such a case, it is the duty of the court to instruct the jury that they are not to consider the evidence admitted. But where evidence is offered which standing alone is not admissible, unaccompanied by any claim that evidence will be introduced having such relation to it as to make it admissible, it is error to admit it, and the error cannot be cured by instructing the jury to disregard it."

[9] Barth *v.* State, 39 Tex. Cr. Rep. 381, 46 S. W. 228, 73 Am. St. Rep. 935; Clements *v.* State, 61 Tex. Cr. Rep. 161, 134 S. W. 728. But that this test cannot properly be applied universally is well illustrated by the recent case of Miller *v.* State (Tex. Cr. App.), 185 S. W. 29, discussd *infra.*

[10] G., C. & S. F. Ry. Co. *v.* Levy, 59 Tex. 542, 46 Am. Rep. 269; Henard *v.* State, 46 Tex. Cr. Rep. 90, 79 S. W. 810; Maxted *v.* Fowler, 94 Mich. 106, 53 N. W. 921.

[11] G., C. & S. F. Ry. Co. *v.* Levy, *supra.*

[12] Barth *v.* State, *supra;* G. C. & S. F. Ry. Co. *v.* Levy, *supra;* Drury *v.* Territory, *supra.*

[13] See People *v.* Schooley, 149 N. Y. 99, 43 N. E. 536.

[14] Bell *v.* Clarion, 120 Iowa 332, 94 N. W. 907.

[15] Darnell *v.* State, 58 Tex. Cr. App. 585, 126 S. W. 1122; Clements *v.* State, *supra;* Barth *v.* State, *supra;* Gattis *v.* Kilgo, 131 N. C. 199; 42 S. E. 584; Wojtylak *v.* Kansas & T. Coal Co., *supra.*

[16] G., C. & S. F. Ry. Co. *v.* Levy, *supra;* Wojtylak *v.* Kansas & T. Coal Co., *supra.*

applies with special force where the legitimate evidence tending to sustain the verdict was of very little weight.[17] But if the jury awarded very low damages or inflicted a very light penalty,[18] or the legitimate evidence was amply sufficient to support the verdict,[19] this would indicate that the error was harmless.

It would seem that the only true method of ascertaining whether the party was prejudiced by the evidence erroneously admitted would be to disregard all arbitrary rules and criteria, and carefully consider the particular case in hand in the light of its own peculiar circumstances.[20] This was done in the recent case of *Miller* v. *State* (Tex. Cr. App.), 185 S. W. 29, which was a trial for statutory rape. Evidence calculated to greatly damage the defendant's case was erroneously admitted but later withdrawn, and the jury was instructed not to consider it. The preponderance of the legitimate evidence clearly established the defendant's guilt; and the jury assessed the very lowest penalty which the law allowed. The appellate court held that the defendant was not prejudiced by the error and affirmed the conviction. This holding would seem clearly in accordance with reason and common sense. And when we look at the actual decisions rather than the language of the courts it seems that the majority of cases have been decided in accordance with the principles advocated above.

THE RULE OF "EJUSDEM GENERIS."—The familiar rule of construction expressed in the maxim "*ejusdem generis*" was laid down by Lord Tenderden in the case of *Sandiman* v. *Beach* [1] in these words, "Where general words follow particular ones, the rule is to construe them as applicable to persons ejusdem generis." This rule is frequently invoked as a positive rule of law, and its arbitrary application is often sought; but the common holding of the cases and the trend of judicial comment seem to declare that it is only a means of arriving at the intention of the writer as expressed in his

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[17] Drury *v.* Territory, *supra.*

[18] Tullidge *v.* Wade, 3 Wills. 18; McDonald *v.* State (Tex.), 179 S. W. 880.

[19] Bell *v.* Clarion, *supra;* McDonald *v.* State, *supra.*

[20] In the well reasoned opinion in Drury *v.* Territory, *supra,* it was said: "The correct rule—that based upon sound reason, common experience, and good judgment—we think is, if the illegal evidence was of such a character as would ordinarily create such prejudice against the defendant as was reasonably calculated to make a fixed impression upon the minds of the jury and influence their verdict, and the court, from an examination of the whole case, is unable to see that such evidence did not probably affect the verdict, or that the verdict would not probably have been different, in any event, then the verdict should be set aside, and new trial ordered. This rule leaves the court to exercise some judgment as to the character and effect of the illegal evidence, and the question is not left to be determined by an arbitrary rule, without reference to the facts or conditions surrounding the case."

[1] Barn & C. 96.